

EXHIBIT “A”

Summons and Complaint

Mark Fitzhenry

v.

*Festiva Development Group, Inc., Herbert H. Patrick, Jr., Individually, dba
as Festiva, ETOURANDTRAVEL, Inc.*

Case No. 2016CV1010600974



CORPORATION SERVICE COMPANY*

Notice of Service of Process

KG3 / ALL
Transmittal Number: 15784690
Date Processed: 10/25/2016

Primary Contact: Catherine Claussen
Zealandia Holding Company, Inc.
1 Vance Gap Rd
Asheville, NC 28805-1227

Electronic copy provided to: Natalie Hoffman

| | |
|---------------------------|------------------------------------------------------|
| Entity: | ETourandTravel, Inc. Entity ID Number 1679560 |
| Entity Served: | Etourandtravel, Inc. |
| Title of Action: | Mark Fitzhenry vs. Festiva Development Group, Inc. |
| Document(s) Type: | Summons/Complaint |
| Nature of Action: | Violation of State/Federal Act |
| Court/Agency: | Charleston County Magistrate's Court, South Carolina |
| Case/Reference No: | 2016CV1010600974 |
| Jurisdiction Served: | South Carolina |
| Date Served on CSC: | 10/24/2016 |
| Answer or Appearance Due: | 30 Days |
| Originally Served On: | CSC |
| How Served: | Certified Mail |
| Sender Information: | Mark Fitzhenry 843-209-0278 |

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2016CV1010600974

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Mark Fitzhenry
10 Brigadier Drive
Charleston, SC 29407
(843) 209-0278

PLAINTIFF(S)

Vs

AGENT

Festiva Development Group, Inc.
1703 Laurel St.
Columbia, SC 29201

Herbert H. Patrick, Jr
dba as Festiva
One Vance Gap Road
Asheville, NC 28805

Etourandtravel, Inc.
1703 Laurel St.
Columbia, SC 29201

Corporation Service Company

DEFENDANT(S)

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

**Charleston County
Small Claims - City
995 Morrison Drive P. O. Box 941
Charleston, SC 29403
Phone: (843) 724-6720 Fax: (843) 724-6785**

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. **If you desire a jury trial, you must request one within five (5) business days before the date of trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

READ ATTACHED INSTRUCTIONS CAREFULLY

October 18, 2016

STATE OF SOUTH CAROLINA)

CASE NO.:

2016CV1010600974

COUNTY OF CHARLESTON)

MARK FITZHENRY,
Plaintiff,)

) **VERIFIED COMPLAINT**

vs.)

FESTIVA DEVELOPMENT GROUP, INC.,)
HERBERT H. PATRICK, Jr., Individually, dba as Festiva,)
ETOURANDTRAVEL, INC.,)
Defendants.)

FILED IN CHARLESTON COUNTY

OCT 18 2016

CITY SMALL CLAIMS COURT

ADDRESS FOR REGISTERED AGENT OF DEFENDANT FESTIVA DEVELOPMENT GROUP, INC.,:

Corporation Service Company
1703 Laurel St.
Columbia, SC 29201

ADDRESS FOR DEFENDANT HERBERT H. PATRICK, Jr., individually:

Herbert H. Patrick, Jr.
One Vance Gap Road
Asheville, NC 28805

ADDRESS FOR REGISTERED AGENT OF DEFENDANT ETOURANDTRAVEL, INC.,:

Corporation Service Company
1703 Laurel St.
Columbia, SC 29201

Plaintiff complaining of the Defendants alleges as follows:

TYPE OF ACTION

1. This is an action to recover statutory damages imposed by 47 U.S.C. § 227, and trebled damages constituting forfeiture or other penalty.

PARTIES

2. Plaintiff has cellular phone service in Charleston County and the statutory violations and injury to Plaintiff occurred in Charleston County.
3. Defendant FESTIVA DEVELOPMENT GROUP, INC., is registered with the South Carolina Secretary of State as a Nevada for-profit company that conducts and transacts business in Charleston County.
4. Defendant FESTIVA DEVELOPMENT GROUP, INC., is registered with the Florida Secretary of State and lists its principal address at 3626 Quadrangle Boulevard, Suite 300, Orlando, FL 32817.
5. Defendant HERBERT H. PATRICK, Jr., Individually, dba as Festiva, has been listed with the Florida Secretary of State as "DIRECTOR, CEO" of Co-Defendant ETOURANDTRAVEL, INC.
6. Defendant ETOURANDTRAVEL, INC., is registered with the South Carolina Secretary of State as a Florida for-profit company and it conducts and transacts business in Charleston County.
7. Defendant ETOURANDTRAVEL, INC., is registered with the Florida Secretary of State and lists its principal address as 3626 Quadrangle Boulevard, Suite 400, Orlando, FL 32817.
8. Representatives of Defendant ETOURANDTRAVEL, INC., deceptively conduct business by claiming to represent "Gift Recovery".

VENUE AND JURISDICTION

9. The Telephone Consumer Protection Act ("the TCPA or "the Act") consists of 47 U.S.C. § 227 as amended and the FCC's implementing rules (see generally 47 C.F.R. Part 64 Subpart 1200 and Part 318). The TCPA places conduct, record keeping, and disclosure requirements on entities engaged in telephone calls, solicitations and facsimile transmissions, and it provides a private right of action by a consumer in State court in response to violations of the TCPA's regulations.
10. This cause of action arises out of conduct of Defendants initiating telephone call(s) to Plaintiff, to his cellular telephone line in Charleston County.
11. Venue and jurisdiction are proper in this Court pursuant to 47 USC § 227, the Constitution and Laws of the state of South Carolina and United States as they may apply

ACTS OF AGENTS

12. Whenever it is alleged in this complaint that Defendants did any act, it is meant that the Defendants performed, caused to be performed, and/or participated in the act and/or that Defendants' officers, employees, contractors, assigns, successors, predecessors, affiliates,

or other agent or entities performed or participated in the act on behalf of, for the benefit of, and/or under the authority of the Defendants.

DEFENDANTS' USE OF AUTOMATIC TELEPHONE DIALING SYSTEM

13. Defendants use, directly and/or by their agents or other entities acting on Defendants' behalf and for Defendants' benefit, one or more devices that call cellular telephone subscribers with an automatic telephone dialing system and/or a prerecorded or artificial voice message without the prior express consent of the called party.
14. Defendants directly and/or by their agents or other entities acting on Defendants' behalf and for Defendants' benefit, did initiate the telephone call(s) alleged herein with an automatic telephone dialing system and/or an artificial or prerecorded voice message.
15. Defendants directly and/or by their agents or other entities, are aware of this device's designed operation and/or have knowledge that calls were being made using an automatic telephone dialing system and/or an artificial or prerecorded voice message.
16. Defendants directly and/or by their agents or other entities acting on Defendants' behalf and for Defendants' benefit, can exercise control over the automatic telephone dialing system and/or an artificial or prerecorded voice message.
17. Defendants directly and/or by their agents or other entities, can exercise control over the people who make the calls that employ an automatic telephone dialing system and/or an artificial or prerecorded voice message.
18. Defendants FESTIVA DEVELOPMENT GROUP, INC., HERBERT H. PATRICK, Jr., Individually, and ETOURANDTRAVEL, INC., are co-adventurers engaged in a joint venture or partnership designed to accomplish a single enterprise.

TELEPHONE CALL(S) MADE TO PLAINTIFF

THE CALL

19. At all times relevant, Plaintiff subscribed to cellular phone service at (843) 209-0278.
20. On or about July 29, 2016, at or about 10:18 AM, a telephone call, (THE CALL), was initiated to the Plaintiff's cellular telephone line by or on behalf of the Defendants.
21. THE CALL was not solicited by the Plaintiff.
22. At no time has Plaintiff granted to any of the Defendants "prior express consent" to initiate or to make any call to his cellular telephone service using any automatic telephone dialing system or an artificial or prerecorded voice.

23. THE CALL was a call that used any automatic dialing system to make any call to Plaintiff's cellular telephone to deliver an artificial or prerecorded voice.
24. The purpose of THE CALL was, among other things, to deliver a telephone call to the called party on behalf of the Defendants.
25. In THE CALL described herein, Defendants willfully and/or knowingly intended to use any automatic telephone dialing system to make a call to Plaintiff's cellular telephone service using an artificial or prerecorded voice.

FIRST CAUSE OF ACTION - 47 U.S.C. 227 (b)(1)(A)(iii)

26. Paragraphs 1 through 25 are restated as if set forth herein.
27. Defendants did initiate, or cause to be made on their behalf and for their benefit, ONE telephone call, THE CALL, to Plaintiff's cellular telephone service using an automated dialing system and/or an artificial or prerecorded voice without the prior express consent of the called party.

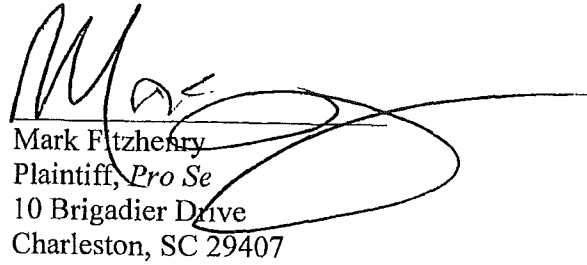
Willful or Knowing Violations

28. Defendants' actions, as described in paragraph 27 manifests ONE knowing and/or willful actions in violation of 47 U.S.C. 227 within the meaning of the 1934 Communications Act and the Federal Communications Commission.

PRAYER FOR RELIEF

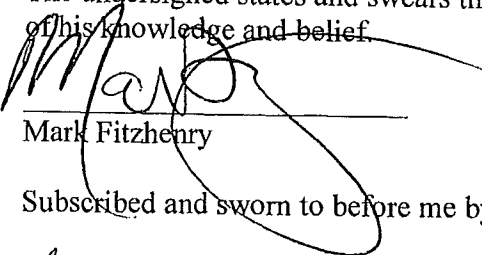
29. WHEREFORE, Plaintiff prays for the following relief, temporarily and permanently:
30. For the statutory damages of \$500 per violation, to be awarded to the Plaintiff in accordance with the TCPA, for each of the Defendants' violations of that TCPA and;
31. For trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of Defendants' willful and/or knowing violations of that TCPA listed in paragraph 28 above; and
32. For unspecified punitive damages in an amount to be determined by this Court.
33. For such other and further relief as the Court may deem just and proper.
34. Plaintiff waives the excess of any award above the jurisdiction of the Court in effect at the time at the time judgment is rendered.

Respectfully submitted,
The 12th day of October, 2016.

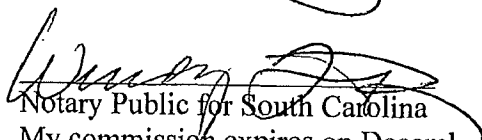

Mark Fitzhenry
Plaintiff, *Pro Se*
10 Brigadier Drive
Charleston, SC 29407

VERIFICATION

The undersigned states and swears that all the forgoing allegations are true and correct to the best of his knowledge and belief.


Mark Fitzhenry

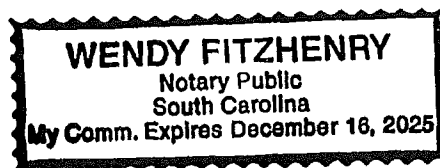
Subscribed and sworn to before me by Mark Fitzhenry on this the 12th day of October, 2016.


Notary Public for South Carolina
My commission expires on December 16, 2025.

FILED IN CHARLESTON COUNTY

OCT 18 2016


CITY SMALL CLAIMS COURT



IN THE CHARLESTON COUNTY MAGISTRATE'S COURT

INSTRUCTIONS FOR DEFENDANT

If you do not wish to oppose the plaintiff's claim you may:

Contact the plaintiff and make an out-of-court settlement with the plaintiff before the trial date and file with the magistrate court a dismissal of the case signed by the plaintiff, or

Make no answer to the complaint. In that case, the plaintiff will be given a default judgment against you in the amount specified in the complaint.

If you wish to oppose the claim:

- a. You must file an answer with the magistrate's court within 30 days after the date of service. If you fail to answer within that time period, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint. Your answer may be made in writing in a form approved by the magistrate within the time limit specified in the summons.
- b. If you answer within the specified time, you will be notified of the time and date of trial. You must maintain a correct mailing address with the Court and you must appear for trial. Should you fail to appear, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint.
- c. At the time of trial you must bring with you all books, papers, witnesses, and evidence you have to establish your defense. You are required to comply with the South Carolina Rules of Evidence.
- d. At your request the court will issue a subpoena for any witness you may need (You must request the subpoena as soon as possible and before the trial date). **IF THE SUBPOENA MUST BE SERVED BY A DEPUTY, THERE IS AN ADDITIONAL \$8.00 FEE THAT MUST BE PAID TO THE COURT FOR SERVICE OF THE SUBPOENA.**

If you desire a jury trial, you must request one in writing at least **FIVE (5)** working days prior to the date set for trial. If no jury trial is timely requested, the matter will be heard and decided by the magistrate.

If you have a claim against the plaintiff that grows out of the same transaction or occurrence as the plaintiff's claim, you may file a Counterclaim. The Counterclaim must be filed with the magistrate within the time limits specified in the summons for answering. The Counterclaim must be made in writing in a form approved by the magistrate. Your Counterclaim will be tried at the same time as the Plaintiff's claim if it does not exceed the jurisdiction of the magistrate to hear. If the Counterclaim exceeds the magistrate's jurisdiction, the entire matter will be transferred to the Circuit Court.

If you have a claim against the plaintiff that does not grow out of the same occurrence or transaction as the plaintiff's claim, you may file a claim (complaint) against the plaintiff. This claim would be heard separate and apart from the plaintiff's claim against you.

If you are a member of the Armed Service of the United States, please advise the court upon the receipt of this summons.

If you are under 18 years of age, please advise the court upon receipt of this summons.

If you are a prisoner in any municipal, county, state, or federal prison, please advise the court upon receipt of this summons.

You may be represented by an attorney, but are not required to have one. The magistrate's court will explain the procedure of the court and will help you prepare papers related to your action if you require such assistance. The Court cannot, however, represent you, provide you with an attorney or give you any legal advice.

If you are a business and are going to be represented by a Non-Lawyer, a Non-Lawyer Authorization Form must be included with your Answer/Counterclaim. (See 33-1-103 SC Code of Laws)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

2016CV1010600974
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

ANSWER

Mark Fitzhenry
10 Brigadier Drive
Charleston, SC 29407
(843) 209-0278

PLAINTIFF(S)

Vs

AGENT

| | | | |
|---------------------------------|------------------------|----------------------|-----------------------------|
| Festiva Development Group, Inc. | Herbert H. Patrick, Jr | Etourandtravel, Inc. | Corporation Service Company |
| 1703 Laurel St. | dba as Festiva | 1703 Laurel St. | |
| Columbia, SC 29201 | One Vance Gap Road | Columbia, SC 29201 | |
| DEFENDANT(S) | Asheville, NC 28805 | | |

On _____ I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the **Charleston County Summary Court**, is as follows:

CHECK ONE:

A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)B. ☐ I admit everything in the complaint and do not want a trial.C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)D. ☐ I deny that I am responsible at all because: (use additional pages if necessary)**YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS**

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATED: _____

SIGNATURE OF DEFENDANT(S) (OR ATTORNEY) _____

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

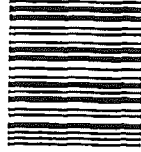
Small Claims - City
995 Morrison Drive, P. O. Box 941
Charleston, SC 29403
Phone: (843) 724-6720

Mark Fitzhenry
10 Brigadier Dr.
Charleston, SC 29407

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29201

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